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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,148	03/29/2004	Gary W. James	METZ 2 00011	2979
27885	7590	01/17/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			GABLER, PHILIP FRANCIS	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/812,148	JAMES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Philip Gabler	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 6 is objected to because of the following informalities: based on information in the specification (i.e. the support members and lances are the same structure), the word "comprises" should be replaced with the word "is." Appropriate correction is required.
2. Claims 11 and 12 are objected to because of the following informalities: although the claims refer to "the lance of claim 9," there is no lance in claim 9. It is assumed that the claims are referring to the lance of claim 10 and have been examined as such. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

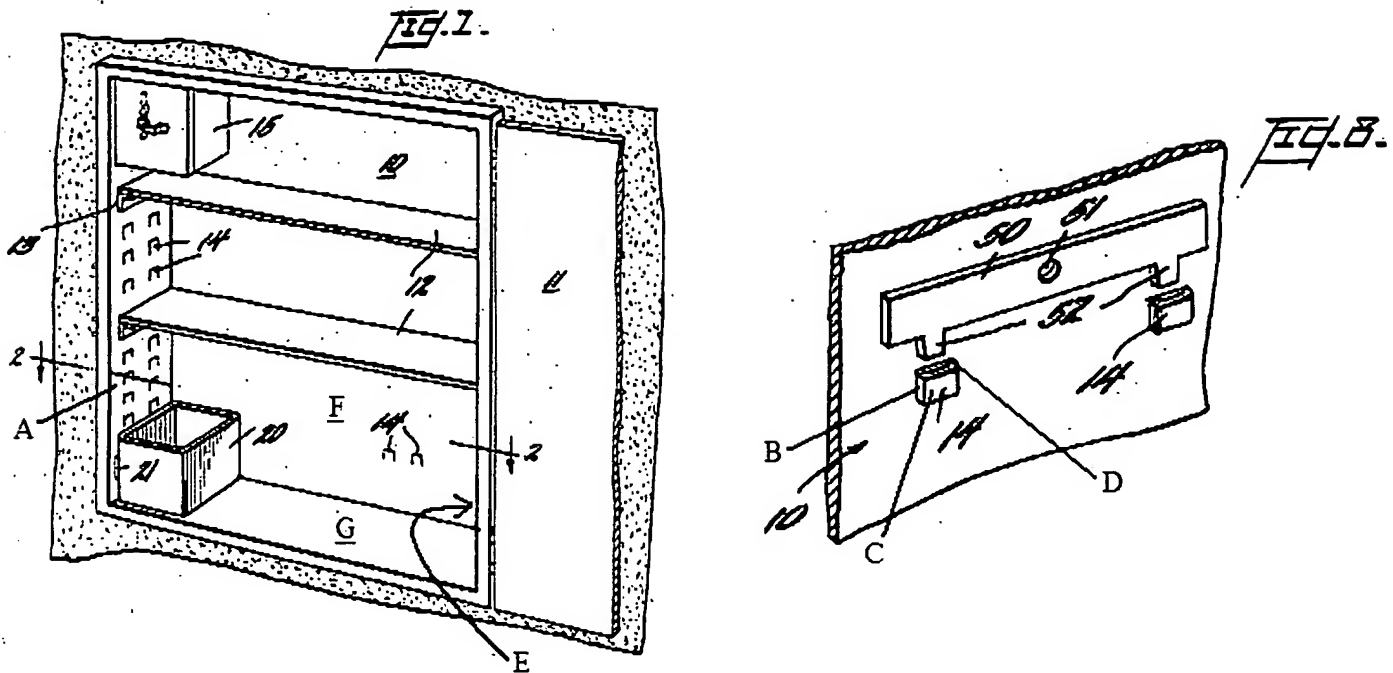
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wise (US Patent Number 2911275). Wise (Figures 1 and 8) discloses a cabinet comprising: a first side wall (viewed as A in Exhibit 1); and a support member (14) extending from the first side wall, wherein the support member includes a first leg (B) extending at least substantially normal to the first side wall and a second leg (C)

extending from the first leg spaced from and at least substantially parallel to the first side wall, wherein the second leg includes a protrusion (D).

5. Regarding claim 2, Wise further discloses an opening formed in the first side wall adjacent said support member (opening behind member C).

6. Regarding claim 7, Wise further discloses a second side wall (E) positioned opposite the first side wall; a third wall (F) interconnecting the first and second side walls; a base wall (G) interconnecting the first, second, and third walls; and a second support member (also labeled 14) extending from the third wall, wherein the second support member is positioned at substantially the same height from the base wall as the first support member on the first wall, wherein the second support member includes a first leg extending at least substantially perpendicular to the third wall and a second leg extending from the first leg spaced from and at least substantially parallel to the third wall, wherein the second leg includes a protrusion (the first leg, second leg, and protrusion of the second support member are not well shown in Wise's figures but are equivalent to these components shown on the first support member).



**Exhibit 1:** Wise '275 Figures 1 and 8

7. Claims 1, 2, 6, 7, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Evans (US Patent Number 3168356). Evans (Figures 3-5) discloses a cabinet comprising: a first side wall (45 including strips 46); and a support member (47) extending from the first side wall, wherein the support member includes a first leg (viewed as A in Exhibit 2) extending at least substantially normal to the first side wall and a second leg (B) extending from the first leg spaced from and at least substantially parallel to the first side wall, wherein the second leg includes a protrusion (dimple C). Note that the features of the support member (47) have been indicated on identical support member (17) for ease of viewing.

8. Regarding claim 2, Evans further discloses an opening formed in the first side wall adjacent said support member (opening behind 47, which can also be viewed behind support member 17).

9. Regarding claim 6, Evans further discloses the support member is a lance.

10. Regarding claim 7, Evans further discloses a second side wall (13) positioned opposite the first side wall; a third wall (11) interconnecting the first and second side walls; a base wall (not shown, but inherent in a cabinet structure, located opposite top surface D) interconnecting the first, second, and third walls; and a second support member (17) extending from the third wall, wherein the second support member is positioned at substantially the same height from the base wall as the first support member on the first wall, wherein the second support member includes a first leg (A) extending at least substantially perpendicular to the third wall and a second leg (B) extending from the first leg space from and at least substantially parallel to the third wall, wherein the second leg includes a protrusion (dimple C).

11. Regarding claim 9, material choice is a matter of preference and therefore given little patentable weight. Evans however, does disclose various components of the cabinet fabricated from metal (see column 2 line 20, column 2 lines 24-25, etc.).

12. Regarding claim 10, Evans discloses a lance (17) formed in a wall of a cabinet for supporting a shelf, the lance comprising: a first leg (A) extending at least substantially normal to an associated surface; a second leg (B) extending from the first leg at least substantially normal to the first leg; and a dimple (C) formed in the second leg.

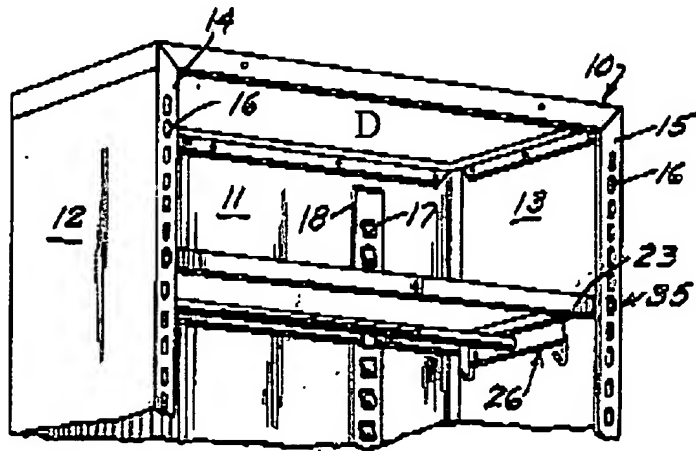


FIG. 3

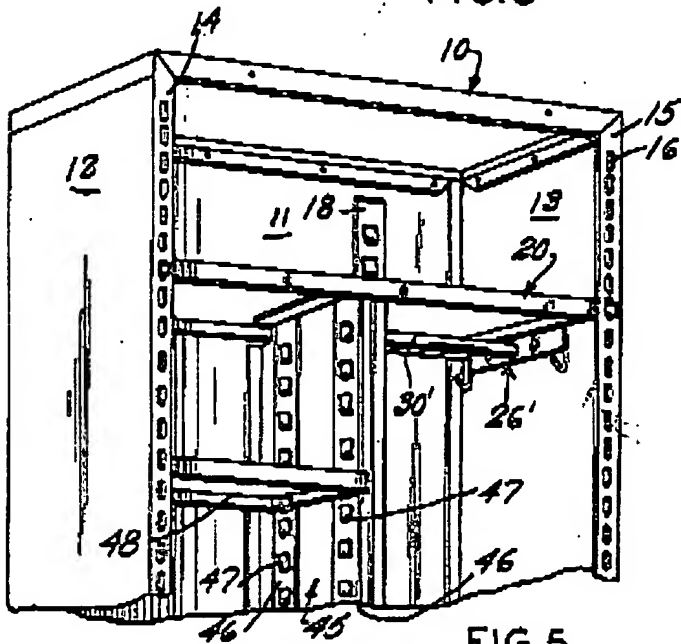


FIG. 5

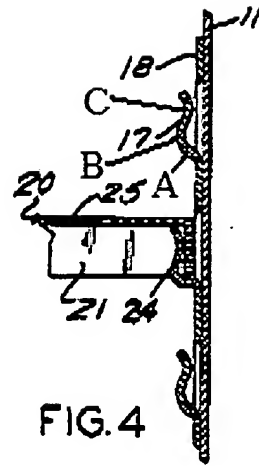


FIG. 4

Exhibit 2: Evans '365 Figures 3-5

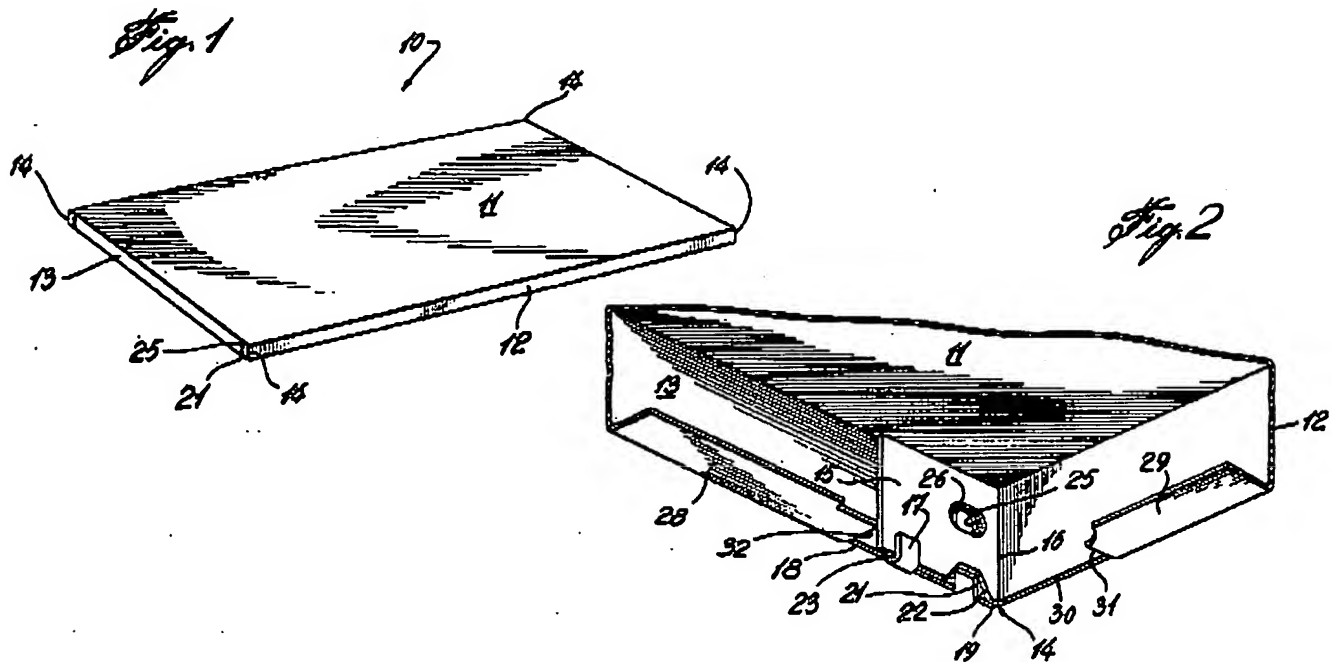
***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

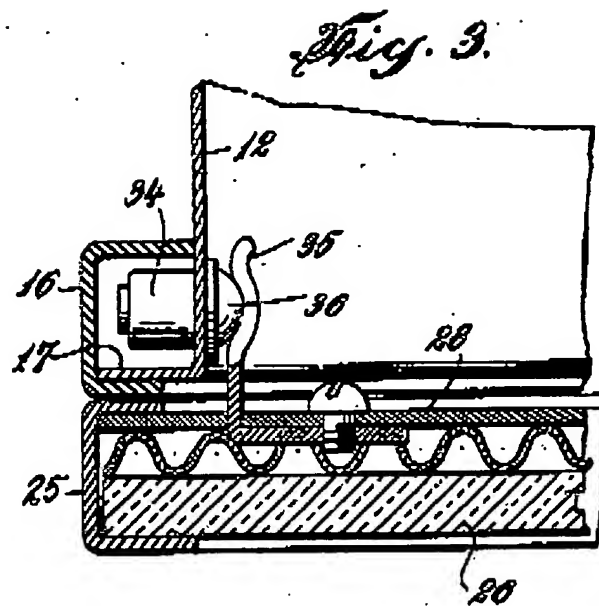
14. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Levitt et al. (US Patent Number 4269318). Evans discloses a cabinet as recited in claims 1 and 7 including a removable shelf (20) with a planar surface (25) and flanges (21-24) depending from the planar surface but does not disclose an opening in the flange dimensioned to receive the protrusion. Levitt (Figures 1 and 2) discloses a metal shelf (10) including an opening (25, 26) in a flange (13) for mounting purposes. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Evan's shelves to include a hole for receiving the protrusion as taught by Levitt because this would result in more securely mounted shelves.

15. Regarding claim 8, Evans discloses metal strips (18) attached to the third wall (11) in column 2 lines 20-22 but, in his figures, shows only one strip (18) and does not show a shelf engaging the support members of both the first and third walls. It is inherent however (by Evans' disclosure) that a second strip (18 including hooks 17) would be present on the third wall and that shelf (48) would engage support members on both the first and third walls (the additional strip being present on the left side of the cabinet).



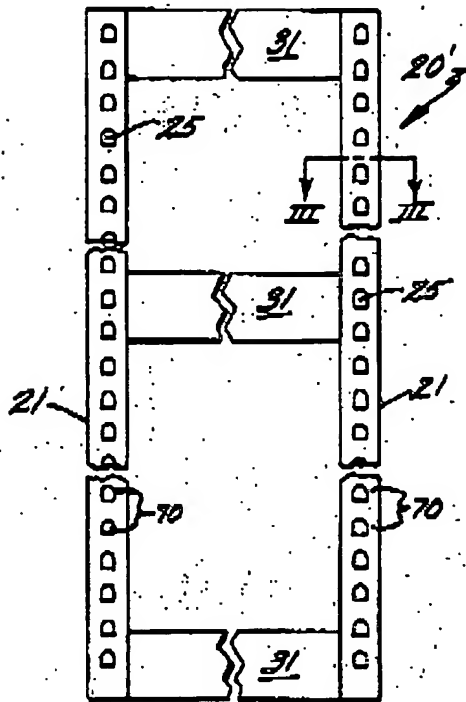
Levitt et al. '318 Figures 1 and 2

16. Claims 4 and 11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Blackman (US Patent Number 1941126). Evans discloses a cabinet as recited in claim 1 including a lance as described in claim 10 but does not disclose a hemispherical bump/dimple. Blackman (Figure 3) discloses a cabinet with a lance-like member (35) including a hemispherical bump/dimple for engaging a hemispherical catch (36). Accordingly, it would have been obvious to modify Evans bump/dimple to a hemispherical shape as taught by Blackman because this arrangement would provide smooth engagement of the shelf as well as a secure mount.

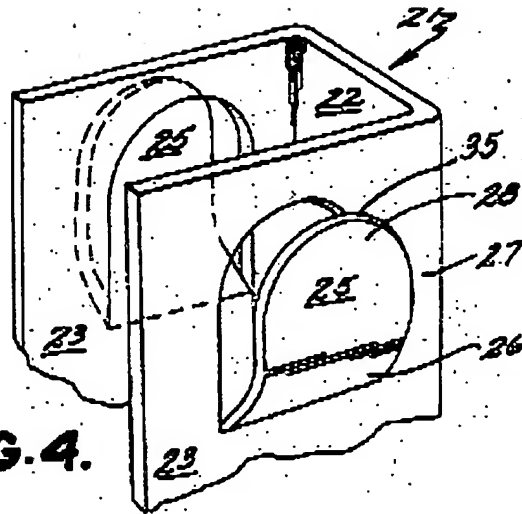


Blackman '126 Figure 3

17. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Young (US Patent Number 3677202). Evans discloses a cabinet as recited in claim 1 including a lance as described in claim 10 but does not disclose a rounded upper edge. Young (Figures 2 and 4) discloses a shelving system including lances/support members (25) with rounded upper edges. Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Evans' lances/support members to included rounded upper edges as taught by Young because this would aid manufacturability as well as assisting in the installation of the shelves.



**FIG. 2.**



**FIG. 4.**

Young '202 Figures 2 and 4

18. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans. Evans discloses a cabinet (10) including removable shelves (20 and 48) with flanges (21-24) intended to be mounted on lances (17 and 47) with dimples but does not specifically state a "method" of installing a removable shelf in a cabinet. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to install a shelf within a cabinet as prescribed by applicant's method because the normal assembly of Evans' structure would inherently encompass the steps (i.e. providing a shelf with flanges that is to align with a lance, and placing the flanges in the lances such that openings on the flanges receive dimples on the lances) as set forth.

***Conclusion***


19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Winqvist (US Patent Number 1164439), Johnsson (US Patent Number 3422775), and DiCenzo (US Patent Number 4034683) references are cited for disclosing various cabinet and shelving systems using supports for removable shelves similar to the supports of the instant application.

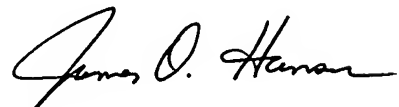
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFG   
1/5/2006

  
JAMES O. HANSEN  
PRIMARY EXAMINER